

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

JOHN KINDS, ET AL. §
§
VS. § CIVIL ACTION NO. G-05-598
§
CHEVRON USA, INC., ET AL. §

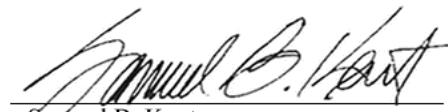
OPINION AND ORDER

On August 24, 2006, Exxon Mobil Corporation (Exxon) filed its “ Motion to Dismiss or in the Alternative, Motion for More Definite Statement.” After a review of the file, this Court issues this Opinion and Order.

On November 7, 2006, Plaintiff, John Kinds, acting individually and as the purported representative of others, filed this action against, *inter alios*, “ Chevron, USA, Inc., formerly known as Exxon Oil Company, previously Humble Oil and Refining Company.” On April 20, 2006, this Court issued an Opinion and Order which accepted a Report and Recommendation of the United States Magistrate Judge and dismissed, *inter alia*, Kinds’ complaint against “ Chevron USA. Inc.” because Kinds had failed to serve Chevron within the required 120 day period established by Rule 4(m) of the Federal Rules of Civil Procedure. Apparently, on April 19, 2006, the proper potential Defendant, Exxon, filed a “ Motion to Quash Service for Insufficient Process and Motion to Dismiss.” For reasons unknown, Exxon’ s Motion was not docketed by the District Clerk and this Court was, therefore, unaware of the Motion when the Opinion and Order issued. Thereafter, on June 23, 2006, Kinds had the Clerk issue a new summons for Exxon, which Exxon claims was received in the mail on July 5, 2006. This prompted Exxon to file the instant Motion.

In the opinion of this Court, the Order dismissing the misnamed "Chevron USA, Inc.," resulted in the implicit granting of Exxon's Motion to Quash and the explicit dismissal of Kinds' complaint against Exxon. Kinds' later attempt to serve Exxon was, therefore, without any legal basis or effect. This action **REMAINS** dismissed as to Exxon and its instant Motion (Instrument no. 20) is **DENIED as moot**.

DONE at Galveston, Texas, this 15th day of September, 2006.



Samuel B. Kent
United States District Judge